

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Dennis D. Davis,

Plaintiff,

v.

Case No. 12-13804

Commissioner of Social Security,

Sean F. Cox
United States District Court Judge

Defendant.

ORDER ADOPTING
REPORT AND RECOMMENDATION

Plaintiff brought this action challenging the Commissioner's decision denying Plaintiff's application for Supplemental Security Income under the Social Security Act. Thereafter, the matter was referred to Magistrate Judge David Grand for determination of all non-dispositive motions pursuant to 28 U.S.C. § 636(b)(1) and Report and Recommendation pursuant to § 636(b)(1)(B) and (C).

Thereafter, the parties filed cross-motions for summary judgment. In a Report and Recommendation ("R&R") issued on July 11, 2013, Magistrate Judge Grand recommended that this Court: 1) Deny Plaintiff's Motion for Summary Judgment; and 2) Grant the Commissioner's Motion for Summary Judgment, affirming the findings and conclusions of the Commissioner.

Pursuant to FED. R. CIV. P. 72(b), a party objecting to the recommended disposition of a matter by a Magistrate Judge must file objections to the R&R within fourteen (14) days after being served with a copy of the R&R. "The district judge to whom the case is assigned shall make a *de novo* determination upon the record, or after additional evidence, of any portion of the

magistrate judge's disposition to which specific written objection has been made." *Id.*

Plaintiff filed timely objections on July 25, 2013. (Docket Entry No. 18). Plaintiff asserts two objections. First, Plaintiff asserts that the R&R erred when it questioned whether Dr. Vize was a treating physician. (Objs. at 3). Second, he asserts that the R&R misconstrued the regulations regarding the controlling weight for the opinions of treating physicians. The Court finds these objections without merit.

As explained in the R&R, Magistrate Judge Grand gave Davis "the benefit of the doubt" and assumed that the opinions of Dr. Vize were those of a treating physician. (*See* R&R at 16). He then considered whether the opinion of that treating source should be given controlling weight and explained:

In this case, the ALJ thoroughly considered the opinions of Dr. Vize that would have imposed various marked limitations on Davis, *see supra* at 10-11, and determined that they were entitled to "little weight" because they were "inconsistent with the evidence of record and much of the claimant's testimony at hearing." (Tr. 24-25). Davis claims that the ALJ's "broad assertion that the opinion was not supported by the record is inadequate." (Doc. #11 at 11 (citing *Rogers*, 486 F.3d at 245-46)). But that mischaracterizes the ALJ's comprehensive analysis of the issue. The ALJ did far more than merely assert, in conclusory fashion, that Dr. Vize's opinions were not supported by the evidence of record; indeed, he undertook a thorough, multi-page analysis of the record evidence and Davis' own hearing testimony and explained, in detail, the numerous ways in which the bulk of the evidence was inconsistent with Dr. Vize's opinions. (Tr. 20-25).¹

(R&R at 17).

¹Davis also argues that the ALJ failed to determine whether Dr. Vize's opinions should be "entitled to deference," even if they were not entitled to controlling weight. (Doc. #11 at 21). This argument is without merit. As set forth in greater detail below, the ALJ thoroughly reviewed the evidence of record and determined that Dr. Vize's opinions were inconsistent with both the medical evidence and much of Davis' hearing testimony. (Tr. 24-25). It was because these opinions were not supported by the record evidence that the ALJ gave them "little weight." (*Id.*). Thus, the ALJ reasonably decided not to give deference to Dr. Vize's opinions.

Accordingly, IT IS ORDERED that the Court hereby ADOPTS the July 11, 2013 R&R.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment is DENIED, that Defendant's Motion for Summary Judgment is GRANTED, and that the ALJ's decision is AFFIRMED.

IT IS SO ORDERED.

S/Sean F. Cox
Sean F. Cox
United States District Judge

Dated: September 4, 2013

I hereby certify that a copy of the foregoing document was served upon counsel of record on September 4, 2013, by electronic and/or ordinary mail.

S/Jennifer McCoy
Case Manager